

Child Care Settings and the Americans with Disabilities Act

What is the Americans with Disabilities Act?

The ADA is civil rights legislation designed to protect people with mental or physical disabilities from discrimination based on disability by public accommodations. The ADA requires places of public accommodation and commercial facilities to be designed, constructed and altered in compliance with the ADA Accessibility Guidelines. Public accommodations include a variety of businesses and organizations such as restaurants, hotels, retail establishments, hospitals and child care centers.

What is the definition of an individual with a disability under the ADA?

It is a child or adult who:

- Has a physical or mental impairment which substantially limits one or more of the “major life activities” such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working,
- Has a record of such an impairment, or
- Is regarded as having an impairment.

What does the ADA mean for a child care center or family day care home?

The ADA affords children with mental or physical disabilities the opportunity to participate in all activities and opportunities of community life. Part of community life is the opportunity to benefit from being in a child care setting. Children can no longer be excluded from a child care setting on the basis of a disability.

Are there benefits to including children with disabilities in a child care center or family home?

Yes. All children benefit when children with and without disabilities are served in the same child care centers. Children with disabilities learn important personal and social skills that they might not otherwise learn in segregated settings. Children who do not have disabilities benefit by demonstrating improved self-

concept, growth in social cognition awareness, increased tolerance of others and decreased fear of human differences. The parents of the child with a disability also benefit from integrated child care centers by being able to choose from neighborhood child care services instead of having limited options.

Does Title III of the ADA create changes in child care programs?

The ADA states that public accommodations, including child care centers, must make reasonable modifications in policies, practices, and procedures in order to accommodate individuals with disabilities. A modification is not required if it would “fundamentally alter” the goods or services of a child care setting. Architectural barriers and communication barriers that are structural in nature (such as stairs or permanent signage) which prevent access to services must be removed when “readily achievable.” When barrier removal is not readily achievable, centers must make services available through alternative methods, if those methods are readily achievable.

Child care centers are required to provide “auxiliary aids and services” to ensure effective communication with children who have disabilities affecting hearing, vision or speech, unless to do so would “fundamentally alter” the goods or services provided or would constitute an “undue burden.” Possible changes may include:

- Revision of policies and procedures
- Curriculum adaptations
- Removal of physical barriers
- Provision of additional staff training
- Alteration of staffing patterns
- Provision of certain adaptive equipment

What do “readily achievable” and “undue burden” mean?

Architectural barriers must be removed if “readily achievable.” The term “readily achievable” means easily accomplishable and able to be carried out without much difficulty or expense. Auxiliary aids and services must be provided unless that creates an “undue burden.” “Undue burden” means significant difficulty or expense. Both “readily achievable” and “undue burden” will be determined on the basis of the nature and cost of the action needed in light of the resources available to individual child care centers.

What are “auxiliary aids and services”?

Auxiliary aids and services include a wide range of services and devices for ensuring effective communication for children with a variety of disabilities. These include qualified interpreters, qualified readers and other effective methods, equipment, devices and services needed for communication. Child care centers are not required to provide individually prescribed personal devices such as hearing aids, prescription eyeglasses or other services of a personal nature.

What about safety concerns?

Child care centers may impose legitimate safety requirements only if they are necessary for the center’s safe operation. A child who poses a direct threat—a substantial risk of serious harm to the health and safety of others—does not have to be admitted to the program. If a child’s behavior in the program poses a direct threat to others in spite of reasonable efforts to treat the problem behavior, the child may be expelled. However, any safety requirements used must be based on actual risks and not on speculation, stereotypes or generalizations about children with disabilities.

Are any changes required in the transportation service a center provides to children?

The same requirements under Title III that apply to child care centers apply to the transportation service provided. Barriers to equal access and use of vehicle(s) by children with disabilities must be removed to the extent it is readily achievable to do so. It is not mandatory that centers retrofit existing vehicle(s) with hydraulic or other lifts. However, any vehicles added to the transportation service must adhere to the regulations issued by the Department of Transportation.

What resources are available to help child care centers accommodate children with disabilities?

The National Institute on Disability and Rehabilitation Research (NIDRR) has established ten regional Disability and Business Technical Assistance Centers (DBTACs) to provide information, training, and technical assistance to employers, people with disabilities, and other entities with responsibilities under the ADA. The centers act as a "one-stop" central, comprehensive resource on ADA issues in employment, public services, public accommodations, and communications.

The Arc has a comprehensive resource book on the ADA and child care. The book, *All Kids Count*, gives specific information on the ADA, strategies for including children with disabilities in child care settings and resources for additional information. To obtain a copy of this book, contact The Arc or download it from The Arc’s website (located under Resources, Publications & Videos).

Since centers may incur additional costs in complying with the ADA, what help is available?

To assist businesses in complying with the ADA, Section 44 of the IRS Code allows a tax credit for small businesses, and Section 190 of the IRS Code allows a tax deduction for all businesses.

Can any of the costs incurred be passed on to the families of children with disabilities?

No. Title III prohibits centers from charging parents for the extra measures necessary to ensure nondiscriminatory treatment, such as removing barriers or providing qualified interpreters. However, such costs can be passed on to all participants like any other overhead cost.

How can child care centers meet the needs of both children with disabilities and children without disabilities?

- Provide developmentally appropriate programs for all children;
- Engage in thoughtful planning to create a caring environment sensitive to the needs of all children;
- Initiate on-going training for staff on various topics including:
 - Needs of children with disabilities
 - Child health and safety
 - Child growth and development
 - Planning, learning activities, guidance and discipline
 - Linkage with community services
 - Communication with families

For additional information, contact:

National Association for the Education of Young Children (NAEYC)
1509 16th St. N.W.
Washington, D.C. 20036
1-800-424-2460
202-232-8777
naeyc@naecy.org
www.naeyc.org

Disability and Business Technical Assistance Centers (DBTACs)
1-(800-949-4232 (V/TTY)
This number will route your call to the DBTAC in your region.
<http://www.adata.org/dbtac.html>

Architectural and Transportation Barriers Compliance Board (Access Board)
1-800-872-2253 (Voice)
1-800-993-2822 (TDY)
ta@accessboard.gov
<http://www.access-board.gov/>

Department of Justice ADA Information Line
1-800-514-0301 (Voice)
1-800-514-0383 (TDD)